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FILED

APR 01 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARMANDO GONZALEZ,) No. C 10-4236 JW (PR)
Petitioner,)
vs.) ORDER OF DISMISSAL; NEW
TIM VIRGA, Warden,) ACTION FILED IN ERROR;
Respondent.) INSTRUCTIONS TO THE CLERK

(Doc. ## 2 & 4)

On September 20, 2010, petitioner, a state prisoner incarcerated at New Folsom State Prison in Represa, California, filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a criminal judgment from Santa Clara County superior court, which the Court filed as a new action. But rather than be filed as a new action, the petition should have been filed in Gonzalez v. Walker, No. C-08-2389-VRW (N.D. Cal. filed May 6, 2008). That action was closed administratively when the Court granted petitioner's simultaneously-filed motion to stay the proceedings to allow him to exhaust state court remedies. Id., Doc. #2.

Good cause appearing, the instant action is DISMISSED as filed in error. The clerk is directed to reopen the action in Gonzalez v. Walker, No. C-08-2389-VRW and to file the instant petition under that case number. Once that matter is

1 reopened, an initial order will issue. The clerk is further directed to terminate any
2 pending motions as moot and close the file.

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5 IT IS SO ORDERED.

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7 DATED: March 28, 2011

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ARMANDO R GONZALEZ,

Case Number: CV10-04236 JW

Plaintiff,

CERTIFICATE OF SERVICE

v.

VERGA et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Armando Ruben Gonzalez V-74787
C.S.P. SAC
P.O. Box 290066
Represa, CA 95671-0066

Dated: April 1, 2011

Richard W. Wiking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk